1-18-2012

Peterson v. Gentillon Appellant's Reply Brief 1 Dckt. 38878

IN THE SUPREME COURT OF THE STATE OF IDAHO

CRAIG E. PETERSON and JANICE K. PETERSON, husband and wife, Plaintiffs/Counter-Defendants/Respondents, v. WESLEY J. GENTILLON and CONNIE GENTILLON, husband and wife; LAMON M. GENTILLON and LORI FAYE GENTILLON, husband and wife, Defendants/Counterclaimants/Third-Party Plaintiffs/Appellants/Cross-Respondents, and MARCEL GENTILLON and DORIS GENTILLON, husband and wife, Third-Party Defendants/Resopndents/Cross-Appellants, and SCOTT GENTILLON, Third-Party Defendant/Cross-Appellant, and TRACY GENTILLON, Third-Party Defendant.	Docket # 38878-2011 Bingham County Case No. CV-2007-2306

CROSS-APPELLANT GENTILLONS' REPLY BRIEF

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bingham

---

Honorable Jon J. Shindurling, District Judge, presiding.

Hyrum Erickson
RIGBY, ANDRUS & RIGBY
PO Box 250
Rexburg, Idaho 83442
Attorney for Marcel Gentillon, Doris Gentillon and Scott Gentillon

Dwight E. Baker
BAKER & HARRIS
266 West Bridge
Blackfoot, Idaho 83221
Attorney for The Gentillon Partnership

Kipp L. Manwaring
MANWARING LAW OFFICE, PA
PO Box 50271
Idaho Falls, Idaho 83405
Attorney for Craig E. and Janice K. Peterson

TABLE OF CONTENTS

Page

TABLE OF CASES AND AUTHORITIES ii

1. **PROCEEDINGS TO DATE** 1

2. **INTRODUCTION** 1

3. **ARGUMENT** 2

   a. The district court followed the rule regarding the statute of limitations set out in *Love*. The court's ruling regarding the scope of the resulting trust was based on its finding of lack of intent, not the statute of limitations. 2

   b. The trial court correctly weighed the impact of "possession" in its decision.. 3

   c. The Gentillons are the prevailing party as to the third party complaint as they avoided all liability. 4

   d. The attorney fee clause of the 1998 Agreement was applicable as the Partnership alleged the applicability of the attorney fees clause in their complaint. 5

4. **CONCLUSION** 6

I. TABLE OF CASES AND AUTHORITIES

CASES **Page**

Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.,
141 Idaho 716, 719, 117 P.3d 130, 134 (2005) 5

Garner v. Povey, 151 Idaho 462, 468-471, 259 P.3d 608, 614-617 (2011) 6

Love v. Watkins, 40 Cal. 547 (1871) 1, 2

STATUTES

Idaho Code § 12-120(3) 5, 6

1. PROCEEDINGS TO DATE

Wesley and Connie Gentillon and Lamon and Lori Faye Gentillon (collectively the Partnership) appealed this matter to the Supreme Court on multiple issues against both Craig and Janice Peterson (the Petersons) and Marcel and Doris Gentillon, and Scott Gentillon (the Gentillons). The Gentillons then cross-appealed on the issue of prevailing party status and attorney fees. The Partnership filed Appellants' Brief October 26, 2011. The Gentillons and the Petersons filed Respondents' Briefs November 28, 2011. The Partnership filed Appellants' Reply Brief on December 22, 2011. The Gentillons now file their Cross Appellants' Reply Brief.

2. INTRODUCTION

The trial court correctly ruled that specific performance, as a remedy for breach of contract, is barred by the statute of limitations. The Partnership's attempt to rely on *Love v. Watkins*, 40 Cal. 547 (1871), is unpersuasive as *Love* states the well know rule regarding the accrual of a cause of action for a resulting trust, which the trial court applied. The trial court's finding that the Partnership failed to show by clear, cogent, and convincing evidence an intent to create a trust except as to the property necessary for the passage of the pivot is supported by substantial and competent evidence. However, the trial court erred in not naming the Gentillons as the prevailing party on the Partnership's third party claim and not awarding them costs and fees pursuant to the 1998 Agreement.

3. ARGUMENT

a. The district court followed the rule regarding the statute of limitations set out in *Love*. The court's ruling regarding the scope of the resulting trust was based on its finding of lack of intent, not the statute of limitations.

The Partnership asserts that *Love v. Watkins*, 40 Cal. 547 (1871) is inconsistent with the district court's ruling that the statute of limitations on the Partnership's enforcement of the 1998 Agreement had run. *Appellants' Reply Br.* 5-7. However, the Partnership has correctly recognized that California Supreme Court's decision in *Love* resulted in the application of the resulting trust doctrine. *Appellants' Reply Br.* 7. The holding in *Love* is that the running of the statute of limitations on a resulting trust does not begin to run until the trust is repudiated. That is the rule applied by the district court in ruling that the statute of limitations on a resulting trust had not run. R. at 541-542.

The district court's ruling that the resulting trust applied only to the ground necessary to allow the passage of the Partnership's center pivot was not based on the running of a statute of limitations. Rather, it was based on the lack of clear and convincing evidence of the Gentillons' alleged intent to transfer the property to the Partnership. R. at 673-674. The trial court's finding of fact regarding the intent of the parties is supported by substantial and competent evidence. Scott Gentillon testified that he had understood the agreement to be a straight trade of his father's Lot 16 for his Lot 1 and did not believe that the Partnership was going to receive a portion of Lot 1. Tr. 306:10-24; 285:8-25. Marcel and Doris Gentillon testified that at the time of the Agreement, they believed they owned Lot 1, not Scott. Tr. 55:24-56:14; 43:12-46:21; 66:20-67:23; 234:3-18. As such they could not have agreed to any sort of adjustment to Lot 1's

boundaries. Consistent with that belief, Marcel further testified that when he agreed to give the Partnership his "riparian ground" (also referenced in the 1998 Agreement as Lot 16) he thought that he was going to be paid for it. Tr. 376:6-10.

The trial court correctly applied the rule expressed in *Love* and the court's ruling that a resulting trust applied only on that portion of the property necessary for the passage of the pivot is supported by clear and convincing evidence.

b. The trial court correctly weighed the impact of "possession" in its decision.

The Partnership's Reply Brief relies almost exclusively on its assertion that the Partnership was "in possession" of Lot 1 and that "possession" was the basis on which the trial court should have determined the parties' intent. *Appellants' Reply Br.* 2-10. The brief implies that there was an "exchange of possession" subsequent to the Leavitt Survey in January 1999 that the trial court should have relied on to determine the parties intent. *Id.* However, contrary to the Partnership's argument, there was no "exchange of possession" consistent with the Leavitt Survey in 1999. The Partnership had leased and farmed the property since 1992. R. at 670; Tr. 121:4-13. The Gentillons have lived in the house and had their front yard on the "garden spot" since well before 1991 when the home lot was separated from the rest of the farm. Tr. 424:7-426:13. In 1999, immediately prior to the Leavitt Survey, the Gentillons had possession of the garden spot and the Partnership was farming the property it had formerly leased from Scott Gentillon. No exchange of possession was necessary or took place upon the completion of the Leavitt Survey. In fact, it was not until four years later, 2003, when the Partnership stopped farming north of the line in the Leavitt Survey and then only after Marcel built a fence around his

"horse pasture." Tr. 146:4-147:10. Marcel testified that he placed the fence around the horse pasture based on the area he was able to seed at the time. Tr. 314:18-316:10. He placed the fence where he ran out of grass seed – it had nothing to do with the Leavitt Survey that had been completed four years earlier. *Id.* Contrary to the impression given in the Partnership's briefing, there was no "exchange of possession" subsequent to the Leavitt Survey that the trial court should have relied on to determine the parties intentions. The trial court recognized that the Partnership had farmed some portion of Lot 1 and gave that appropriate weight. R. at 674.

The trial court correctly found that there was no clear and convincing evidence that the Gentillons intended to hold the property in trust for the Partnership. R. at 674.

c. The Gentillons are the prevailing party as to the third party complaint as they avoided all liability.

The trial court found that the Petersons were the prevailing party and failed to name a prevailing party as to the third party action or even address the third party claim in its decision. R. at 775-776. The court's explanation of its decision as to a prevailing party consisted of the following:

> The decision to determine the prevailing party is within this Court's discretion. The Court has considered the arguments of both the Partnership and the Gentillons and recognizes that they have "prevailed" in some of the issues that have been raised. However the Court determines that on the whole, based on the multiple claims and issues presented and the overall outcome of the case, the Petersons are the prevailing party.

R. at 776. The Partnership, in analyzing the prevailing party issue, argues that the trial court declined to name the Gentillons the prevailing party, not because they did not prevail, but because the Gentillons were somehow responsible for the "problem". *Appellants' Reply Br.* 17-

18. However, if the Partnership is correct regarding the trial court's reasoning, the trial court's ruling is improper as it is reversible error for a trial court to "use the award or denial of attorney fees to vindicate his sense of justice beyond the judgment rendered on the underlying dispute between the parties" *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 720, 117 P.3d 130, 134 (2005). The trial court erred by not naming Gentillons the prevailing party to the third party claim when they had avoided all liability on the claim. *Id.*, 141 Idaho at 719, 117 P.3d at 133.

d. The attorney fee clause of the 1998 Agreement was applicable as the Partnership alleged the applicability of the attorney fees clause in their complaint.

The trial court erred in analyzing the applicability of attorney fee clause in the 1998 Agreement as it tied the applicability of the clause to the scope of I.C. 12-120(3). R. at 774-773. The Partnership has agreed that trial court's analysis on this issue was flawed. *Appellants' Reply Br.* 18-19 The Partnership rests its argument against Gentillons request for attorney's fees solely on the issue of whether the Gentillons were a prevailing party. *Id.* As such there is little need for the matter to be addressed here except to provide an additional basis for the applicability of the award overlooked in the Gentillons' initial brief.

The Partnership did not merely request attorney fees pursuant to the 1998 Agreement, the Partnership affirmatively alleged the validity and applicability of the attorney fees clause in the body of its Complaint. R. at 32, 503. Both the original Third Party Complaint and the Amended Third Party Complaint contain distinct counts alleging the Partnership's right to collect attorney fees which include the following allegation:

Third Party Plaintiffs are entitled to recover attorney's fees incurred, as provided by the Agreement for Exchange of Property and Option, at paragraph 9, which states as follows:

> 9. Attorney's Fees. In the event of any action being necessary to enforce any of the terms hereof, arising from the breach of any provision hereof, the prevailing party shall be entitled to receive from the other, all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party, whether or not such claim is litigated, and including fees in bankruptcy court or fees on appeal.

R. at 32, 503. The Court recently held in *Garner v. Povey*, 151 Idaho 462, 468-471, 259 P.3d 608, 614-617 (2011), that the allegation of the existence of a commercial transaction in a complaint, as opposed to a mere request for attorney fees, triggers the application of the statute. The same is true in this case. The Partnership affirmatively alleged the existence and applicability of the attorney fees clause in the body of their complaint. As such, the clause was triggered as it applies to the Gentillons. The trial court erred in ruling that the attorney fee clause of the 1998 Agreement was not applicable.

4. CONCLUSION

Because the district court correctly found the 1998 Agreement was unenforceable, the Court should affirm the ruling that all remedies under it, including specific performance, are barred. Because the district court's ruling regarding the nature and location of any resulting trust were supported by substantial and competent evidence, the Court should affirm that ruling. However, the Court should reverse the trial court's failure to name the Gentillons the prevailing party as to the Partnership's third party complaint and award the Gentillons attorney's fees both at trial and on appeal, pursuant to the terms of the 1998 Agreement and I.C. 12-120(3).

RESPECTFULLY SUBMITTED this 13th day of January, 2012.

Hyrum Erickson
Attorney for Gentillons

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 13th day of January, 2012.

RIGBY ANDRUS & RIGBY, Chartered

Hyrum Erickson

Kipp L. Manwaring, Esq. Just Law Office P.O. Box 50271 Idaho Falls, Idaho 83405	[X] Mail [ ] Hand Delivery [ ] Facsimile
Dwight E. Baker, Esq. Baker & Harris 266 West Bridge Blackfoot, Idaho 83221	[X] Mail [ ] Hand Delivery [ ] Facsimile